

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Verizon Petition for Declaratory Ruling	)	WC Docket No. 02-80
Regarding CLEC Obligations To Cure	)	
Assigned Indebtedness	)	

**REPLY OF BELL SOUTH**

BellSouth Corporation, for itself and its wholly-owned affiliated companies (collectively “BellSouth”), submits the following Reply in response to comments on the above-captioned Counter-Petition for Declaratory Ruling filed by Verizon.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The comments on the Verizon Counter-Petition predictably fall into two camps.<sup>2</sup> On the one hand, ILECs generally support issuance of the requested rulings to confirm their right to be treated like all other creditors in a bankruptcy proceeding and to ensure that telephone subscribers are provided with timely notice regarding the possible discontinuance of their services. On the other hand, a few CLECs stridently accuse ILECs of anticompetitive motives in advancing these arguments and ask the Bureau to manufacture a conflict between

---

<sup>1</sup> FCC Public Notice, *Wireline Competition Bureau Seeks Comment on Verizon’s Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, DA 01-1017 (May 3, 2002) (“Counter-Petition Notice”). See Comments and Counter-Petition of Verizon, filed April 29, 2002. (“Verizon Counter-Petition”).

<sup>2</sup> Comments were filed on May 13, 2002, by Allegiance Telecom, Inc.; Association of Communications Enterprises (“ASCENT”); BellSouth Corporation; Cavalier Telephone, LLC; Global Crossing Ltd.; Qwest Corporation; SBC Communications, Inc.; Winstar Communications, LLC; and Z-Tel Communications, Inc. Comments are hereinafter cited as “Name at \_\_\_\_\_.”

Communications Act and Bankruptcy Code requirements for the purpose of enriching the acquirers of CLEC assets at the expense of ILECs and their customers. The public interest simply does not permit such a result. Rather, BellSouth submits that:

- the Bureau should not disrupt the balance struck by Congress between the rights of debtors and those of innocent creditors;
- permitting the implementation of tariff provisions such as Verizon's regarding assignment of in-place service arrangements is fully consistent with both Communications Act and Bankruptcy Code principles;
- the suggestion that ILECs could be required to accept even less than tariffed installation charges, in addition to being denied a cure of past indebtedness, under Verizon's postulated "name change" scenario is contrary to law and beyond the scope of this proceeding; and
- both carriers and customers will benefit from further clarification of their rights and obligations in bankruptcy in light of pending controversies.

Accordingly, the Bureau should issue the requested declaratory rulings.

## **II. ILECS SHOULD BE PERMITTED TO ENFORCE THEIR SECTION 365 RIGHTS**

Rather than coming to grips with the merits of the issues raised by Verizon, many CLEC filings focus largely on questioning ILEC motives in supporting the requested rulings.<sup>3</sup> In doing so, these CLECs seek to deflect scrutiny from the self-interested nature and pernicious public interest consequences of their own actions and arguments. The record establishes that ILECs should be permitted to avail themselves of the rights enjoyed by all other innocent creditors in bankruptcy, including under Section 365 of the Bankruptcy Code.

The lawful assertion of an entity's rights under Section 365 or any other section of the Bankruptcy Code simply cannot legitimately be characterized as anti-competitive or otherwise

---

<sup>3</sup> See, e.g., Z-Tel at 2,4; Cavalier at 2; Winstar at 24.

improper.<sup>4</sup> CLECs in bankruptcy already enjoy numerous extra-market benefits in addition to the Commission's CLEC pricing and interconnection policies. It will not promote "competition" in any real sense to provide CLECs with yet another subsidy by means of an exemption from their Section 365 cure obligations. Nor is it consistent with the public interest to burden ILEC subscribers with those additional costs while giving the acquirers of CLEC assets a windfall.<sup>5</sup> The public interest in the protection of innocent creditors and their customers from such abuse is self evident and central to both the Communications Act and the Bankruptcy Code.

### **III. THERE IS NO NECESSARY CONFLICT BETWEEN ILEC TARIFFS, THE COMMUNICATIONS ACT AND THE BANKRUPTCY CODE**

Contrary to the claims of various CLECs,<sup>6</sup> it is not Verizon but the CLECs themselves who are asking the FCC to engineer a false conflict between the Communications Act and the Bankruptcy Code, a conflict upon which they then seek to rely in order to deny ILECs their rights under Section 365 and applicable tariffs. As explained above, the Commission's public interest mandate under the Communications Act fully supports protection of the rights of innocent creditors and their customers consistent with the balance established by Congress in the Bankruptcy Code. The law is well settled that the Commission is obligated to harmonize the provisions of both statutes.<sup>7</sup> Here, such harmonization requires recognition of ILECs' rights and, indeed, their fiduciary and common carrier obligations to exercise their cure rights and enforce their tariffs consistently and in a manner that protects the interests of their customers and shareholders.

---

<sup>4</sup> See Verizon Counter-Petition at 21-22.

<sup>5</sup> The potential costs of contract assumption and cure are already factored into the price paid by entities acquiring a CLEC debtor's assets. Verizon Counter-Petition at 22.

<sup>6</sup> See ASCENT at 5-6; Winstar at 9.

<sup>7</sup> Verizon Counter-Petition at 16; SBC at 9; Qwest at 6.

Two CLEC arguments merit further discussion. First, IDT Winstar's claim that its acquisition of the assets of old Winstar amounts to more than a "name change" simply misses the point.<sup>8</sup> Verizon's characterization of IDT Winstar's request to substitute itself for old Winstar in connection with existing service arrangements was directed to the change in the status of the service arrangement, not the nature of the transaction between IDT Winstar and old Winstar.<sup>9</sup> It is precisely because that change reflects acquisition of the service arrangement by an entirely new entity that the assignment cure requirement should be permitted to be enforced, as provided in Verizon's tariff. IDT Winstar effectively admits that it desires simply to take over and rename for billing purposes existing service arrangements<sup>10</sup> and, thus, should be obliged to cure the indebtedness attributable to them.

Second, suggestions such as those of ASCENT that ILECs should be permitted to recover only some unspecified portion of their non-recurring charges in the "name change" scenario are inconsistent with the ILECs' filed tariffs, contrary to existing law, and beyond the scope of this proceeding.<sup>11</sup> BellSouth's tariffs offer only two options for an entity seeking to establish a service arrangement:

- submit an order for new facilities with payment of all installation and other non-recurring charges subject to standard order intervals and availability of facilities; or
- obtain the assignment of an existing service arrangement upon assumption of all outstanding indebtedness associated with that arrangement.

---

<sup>8</sup> See Winstar at 20-22.

<sup>9</sup> See Verizon Counter-Petition at 27.

<sup>10</sup> Winstar at 21.

<sup>11</sup> See ASCENT at 7.

No other alternative exists. Although BellSouth will, consistent with existing FCC policies, seek to minimize the potential for service disruption during the transition to new service arrangements if an acquiring entity elects that option, BellSouth can neither guarantee there will be no disruption nor lawfully discriminate in favor of the acquiring entity to the detriment of its other subscribers. The fact that ILECs may be willing to negotiate something less than a 100% cure of outstanding indebtedness in individual bankruptcy cases consistent with their obligations under Section 201 and 202 of the Communications Act and the Bankruptcy Code<sup>12</sup> does not empower the Bureau to prescribe a lower, non-tariffed level of compensation in this proceeding.

#### **IV. THE FCC SHOULD CLARIFY THE RIGHTS AND OBLIGATIONS OF CARRIERS IN BANKRUPTCY**

The comments submitted in this proceeding discuss the existence of a number of past and present controversies concerning the respective rights and obligations of carrier debtors and carrier creditors in bankruptcy and reveal the increased level of risk of service discontinuance faced by CLEC customers as a result of those controversies.<sup>13</sup> These factors conclusively establish the need for the clarification requested by Verizon.<sup>14</sup> Both customers and creditors should be notified as soon as practicable concerning a debtor's actions that may affect their interests in service continuity and financial recovery. The concerns raised by some CLECs about the impact of a potential service discontinuance notification on customer retention by a debtor carrier<sup>15</sup> are far outweighed by the public interest in avoiding the customer and market disruptions that would accompany any discontinuance without timely notice.

---

<sup>12</sup> See Verizon Counter-Petition at 13-14.

<sup>13</sup> See Cavalier at 2; Z-Tel at 8.

<sup>14</sup> The Bureau should also confirm that ILECs do not need authorization under Section 214 of the Act to cut off service to delinquent debtors as explained in BellSouth's opening comments. See BellSouth at 8-9.

<sup>15</sup> See Winstar at 32-33.

**V. CONCLUSION**

For the foregoing reasons, the Bureau should issue the declaratory rulings requested by Verizon.

Respectfully submitted,

**BELLSOUTH CORPORATION**

By: 

Jonathan Banks  
Mary J. Peed  
Richard M. Sbaratta

Its Attorneys

Suite 900  
1133 - 21<sup>st</sup> Street, NW  
Washington, DC 20036  
(202) 463-4182

Date: May 17, 2002

## CERTIFICATE OF SERVICE

I do hereby certify that I have this 17<sup>th</sup> day of May 2002 served the following parties to this action with a copy of the foregoing REPLY by electronic filing, by electronic mail, and/or by regular mail addressed to the parties listed below.

+Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals, 445 12<sup>th</sup> Street, S.W.  
Room 5-B540  
Washington, D.C. 20554

\*Qualex International  
The Portals, 445 12<sup>th</sup> Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

\*Carmell Weathers  
Competition Policy Division  
Room 6-B153  
Federal Communications Commission  
The Portals, 445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[cweather@ffc.gov](mailto:cweather@ffc.gov)

Michael E. Glover  
Edward Shakin  
Ann Rakestraw  
VERIZON  
1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201-2909

John H. Harwood II  
Robin A. Lenhardt  
WILMER, CUTLER & PICKERING  
2445 M Street, N.W.  
Washington, D.C. 20037

+ VIA ELECTRONIC FILING  
\* VIA ELECTRONIC MAIL

Mary C. Albert  
Vice President, Regulatory and  
Interconnection  
ALLEGIANCE TELECOM, INC.  
1919 M Street, N.W.  
Suite 420  
Washington, D.C. 20036

Charles C. Hunter  
Catherine M. Hannan  
HUNTER COMMUNICATIONS LAW GROUP  
1424 Sixteenth Street, N.W., Suite 105  
Washington, D.C. 20036

Alan M. Shoer  
Assistant General Counsel  
CAVALIER TELEPHONE, LLC  
2134 West Laburnum Ave.  
Richmond, VA 23227-4342

Michael J. Shortley III  
Senior General Counsel  
GLOBAL CROSSING LTD.  
1080 Pittsford-Victor Road  
Pittsford, New York 14534

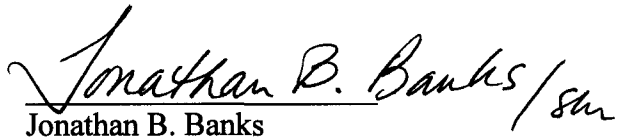
Jack M. Zackin  
Kenneth Oettle  
Andrew H. Sherman  
SILLS CUMMIS RADIN TISCHMAN  
EPSTEIN & GROSS, P.A.  
One Riverfront Plaza  
Newark, N.J. 07102

Aimee Jimenez  
Sharon J. Devine  
QWEST CORPORATION  
Suite 700  
1020 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Christopher M. Heimann  
Gary L. Phillips  
Paul K. Mancini  
SBC COMMUNICATIONS INC.  
1401 I Street, N.W., Suite 400  
Washington, D.C. 20005

Carl Wolf Billek  
WINSTAR COMMUNICATIONS, LLC  
520 Broad Street  
Newark, New Jersey 07102-3111

Thomas M. Koutsky  
Z-TEL COMMUNICATIONS, INC.  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036

  
Jonathan B. Banks